U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

139

FILE: [redacted] Office: Vermont Service Center Date: NOV 29 2000
EAC 99 240 53099

Public Copy

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:
[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Vietnam who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; (3) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (4) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner and his son have experienced extreme emotional trauma as a result of his spouse's constant humiliating verbal abuse and physical threats of violence. As a result, he has lost confidence in himself as a man, he has experienced a loss of safety and the safety of his son, and he has lost all sense of control over his life. Counsel further asserts that neither the government nor his local community in Vietnam offer any type of solace or treatment of victims of extreme domestic abuse, thus subjecting the petitioner and his son to the further trauma of deportation which would greatly lessen their chances of emotional recovery. Counsel submits evidence he claims was submitted on June 8, 2000, but was not considered by the director.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

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(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner entered the United States with a K-1 fiancee visa on August 4, 1997. The petitioner married his United States citizen spouse on August 15, 1997 at Houston, Texas. On August 4, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) provides that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(i)(B) provides that the self-petitioning spouse must establish that he is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship.

8 C.F.R. 204.2(c)(1)(ii) provides that the self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. Further, 8 C.F.R. 204.2(c)(2)(ii) provides that a self-petition must be accompanied by evidence of the relationship. Primary evidence of the marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages of both the self-petitioner and the alleged abuser.

The petitioner indicated on Part 7 of the Form I-360 that he has been married two times and that his spouse has also been married two times. Because the record did not contain evidence that these marriages were legally terminated prior to their marriage, the petitioner was requested on September 16, 1999, and again in a

notice of intent to deny dated April 10, 2000, to submit this evidence. In response, counsel submits a copy of a divorce decree as proof that the petitioner's prior marriage was terminated on June 26, 1995 in Vietnam. He also submits a copy of a divorce decree as proof that the marriage of the petitioner and his U.S. citizen spouse was terminated on August 9, 1999. Counsel stated, however, that the petitioner has no access to proof of the legal termination of his spouse's prior marriage, and that it is logical to assume that his spouse's previous I-129F fiance petition on behalf of the petitioner would not have been approved without proof of the legal termination of any previous marriages.

The director noted, however, that the Service obtained the petitioner's permanent record in an effort to find evidence of the termination of the petitioner's prior marriage in the fiance petition. After a review of the record, the director determined that the fiance petition contradicted the petitioner's statement on the Form I-360 petition. The fiance petition indicted that neither the petitioner nor his spouse had been married previously. Citing Matter of Ho, 19 I&N Dec. 582 (BIA 1988), the director stated that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

On appeal, the petitioner neither addressed nor furnished evidence of legal termination of his spouse's prior marriage, or that his spouse in fact has no prior marriage as claimed in the Form I-129F petition. A prior marriage not legally terminated is a bar to consideration of the marriage upon which the visa petition is based. See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).

The petitioner has failed to overcome the director's findings pursuant to 8 C.F.R. 204.2(c)(1)(i)(A) and (B).

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.

[redacted]

> Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> * * *
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> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed all the evidence furnished by the petitioner. That discussion will not be repeated here. The director, however, stated that marital tensions and incompatibilities which serve to place severe strains on a marriage, and in fact may be the root of a marriage's disintegration, do not, by themselves, constitute the extreme cruelty which was contemplated by Congress in enacting the Violence Against Women Act. He determined that the present case does not suggest that the marital difficulties claimed by the petitioner were beyond those encountered in many marriages.

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On appeal, counsel submits additional evidence to establish extreme cruelty and claims that the director failed to consider this evidence which he submitted on June 8, 2000. He submits a statement dated June 7, 2000 from [redacted] Director of Social Services for No More Victims, Inc.; an amended statement dated June 7, 2000 from [redacted] Chief Executive Officer for No More Victims, Inc.; a statement dated May 24, 2000 from the petitioner; a statement dated May 23, 2000 from the petitioner's son; a statement dated June 6, 2000 from [redacted] and a statement dated June 6, 2000 from [redacted]

8 C.F.R. 204.2(c)(2) provides that the Service will consider any credible evidence relevant to the petition. Documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Further, a self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. As defined in 8 C.F.R. 204.2(c)(1)(vi), the phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury.

Based on the evidence in the record, including evidence furnished on appeal to support his claim of abuse, it is concluded that the petitioner has furnished sufficient evidence to establish that he and his son were the subject of extreme cruelty as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has, therefore, overcome this portion of the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director reviewed and discussed the evidence furnished by the petitioner to establish extreme hardship. He noted that: (1) the

petitioner was in the United States less than two years before filing the self-petition, and no evidence has been submitted to support his claim that he would be unable to find sufficient employment abroad, or that he would be unable to "start again" abroad; (2) multiple general references were made to problems that he would have with the Governors not allowing him back, but no explanation was given as to what that was supposed to mean or that the statements were true; (3) the claim that divorced people would not be regarded well in Vietnam was not supported, although the petitioner was divorced in Vietnam for over two years before he came to the United States; (4) neither testimony nor documentary evidence was furnished to show that he lacked support from either friends or family abroad; (5) the petitioner did not establish in the record that social services would be unavailable to him and his son as claimed.

On appeal, counsel asserts that the petitioner and his son have been the victims of threatened acts of violence, and in some cases actual physical violence, and that professional therapy which would help heal these vicious wounds would not be available to them in Vietnam. He states that they are currently receiving treatment and are making considerable strides toward recovery, and if forced to return to Vietnam, they will never be able to regain the self confidence they had before the abuse. Counsel further asserts that the petitioner and his son would have no assurance of protection from the government or friends within the community. He claims that the petitioner's spouse will return to Vietnam and continue to inflict harm upon them, she has the ability and influence to deprive them of employment, housing and other necessities for living, and that without the protection available to the petitioner and his son here in the United States, they will surely suffer extreme hardship if forced to return to Vietnam.

In a statement dated May 24, 2000, the petitioner states, in part:

> I wondered why I even left Vietnam. But I know I cannot go back. I will be shunned by all in the community. The Vietnamese culture views the husband as the dominant spouse in the marriage relationship. When they find out what I have been a victim of, I will lose all the respect of my friends and family. They will find out because [redacted] (petitioner's spouse) knows all the people I know in Vietnam, including my family. She goes there often and would love to humiliate me even further.
>
> In fact, I know she has already returned to Vietnam because my relatives have told me, and that she says next time she will me there. She stated that she was extremely confident that me and my son would be forced to return. She said that she will do all she can to make life miserable for us. She also said that because I divorced her, she never wanted to see me or my son happy

[redacted]

again. I am scared that if I am forced to return to Vietnam, [redacted] will not make it possible to find happiness with another woman. I would however, be able to get away from [redacted] here in the United States and would thus, likely be able to find love again.

It is very difficult to return to Vietnam also because when a person leaves Vietnam to permanently reside in another country, the government and the people do not look kindly upon them if they are forced to return. I would not have any place to live, I would most likely not be able to find any type of gainful employment because of my age and the circumstances for my return. Both me and my son would be subject to ridicule.

Also, the government in Vietnam would not protect me from [redacted] any of her family and friends. And I could not just move to another city or neighborhood. In Vietnam the government regulates where people live. I am no longer registered in Vietnam. If I went back I would have to live somewhere without government authorization. This would mean that I could depend only on my family and friends from my old neighborhood, a neighborhood to which Pauline is familiar and has contact with. Further, without an authorized address, my son, [redacted] would not be able to attend school.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). Moreover, the loss of current employment, the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

The petitioner claims that he will be shunned by his community and will lose all the respect of his friends and family when they find out that he has been a victim of abuse. No documentary evidence has been furnished, however, to establish that the petitioner would be humiliated, ostracized, or stigmatized because of his failed marriage, or that he would be shunned to the level of extreme hardship as envisioned by Congress, and that he would not receive support from his family or friends there. Further, while counsel states that professional therapy would not be available to the petitioner and his son in Vietnam, it is not clear that he and his son are presently seeking counseling. The record reflects that the petitioner and his son completed their initial intake and orientation process on October 16, 1999, and they also successfully completed the Surviving Domestic Violence component on December 4,

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1999. Furthermore, there is no evidence to establish that the petitioner has a medical or psychological condition that cannot be treated in Vietnam or that they are even presently receiving treatment and care for medical or psychological condition, the treatment plan, the seriousness of their health, whether their presence in the United States is vital to their medical and psychological needs, and that their medical and psychological needs cannot be met in Vietnam.

While counsel claims that the petitioner's spouse will return to Vietnam and continue to inflict harm upon the petitioner and his son, and that she has the ability and influence to deprive them of employment, housing and other necessities for living, no evidence was furnished to establish that his spouse, a United States citizen, has the ability and influence in a foreign country as claimed. The petitioner has not established that he would be unable to seek adequate protection from further abuse, and that the country conditions in Vietnam will cause him extreme hardship. Nor is there evidence that the petitioner's spouse is even pursuing or stalking him in the United States. Furthermore, the petitioner has not established that his spouse or her family, friends, or others acting on her behalf in the foreign country would physically or psychologically harm him.

The petitioner has not established that he would not find employment in Vietnam because of his age, that he would be unable to pursue his occupation or comparable employment upon his return to his native country, or that his son would not be able to attend school. Nor has the petitioner established that his removal from the United States would result in extreme hardship based on economic, political, and social problems in his country. The fact that economic and educational opportunities for the petitioner and his son are better in the United States than in their homeland does not establish extreme hardship. Matter of Ige, supra; Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). In the petitioner's case, removal from the United States would result not in the severance of family ties but rather in the reunification of his family. Further, the petitioner has not established that he is not able to receive support from family members or friends residing in Vietnam.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to himself or to his son.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

[redacted]

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.